IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6795 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

NIRMALABEN @ NIRU DURGAPRASAD KAHAR

Versus

STATE OF GUJARAT

---

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

---

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/03/2000

ORAL JUDGEMENT

#. The petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Baroda City, Baroda, in exercise of powers under Section 3(2) of the PASA Act,

dated August 13, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration four offences registered against the petitioner with different police stations under the Bombay Prohibition Act. The detaining authority also took into consideration the statements of three anonymous witnesses in respect of the incidents that occurred on June 12, 1999 and July 3, 1999 and July 9, 1999 and came to conclusion that the petitioner is a bootlegger, that her activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate, Ms. Subhadra Patel has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate his submission, Ms.Patel submitted that the statements of three anonymous witnesses were recorded on August 5, 1999 and August 6, 1999, which were verified by the detaining authority on August 12, 1999 and the order of detention is passed on August 13, 1999. She submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Ms.Patel therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, this petition may be allowed.

#. Mr. K.T.Dave, learned Assistant Government Pleader, has opposed this petition. He, however, does not dispute the factual aspect of the verification of the statements having been made on August 12, 1999 and the order having been passed on the Augut 13, 1999.

#. Affidavit-in-reply has been filed by the detaining authority, but no explanation is forthcoming as to what

material was considered by the detaining authority for arriving at a conclusion that the fear expressed by the witnesses qua the petitioner is genuine or whether there was any contemporaneous material available with the detaining authority or not.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of three anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore stands vitiated in the instant case as well and the petition deserves to be allowed on this count alone.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 13, 1999 passed against the detenu Smt. Nirmalaben Niru Durgaprasad Kahar is hereby quashed. The detenu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

*****

pirzada/